IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3569 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)

Versus

KIRTIGIRI ISHWARGIRI MEGHANATHI & 1 - Respondent(s)

==========

Appearance :
MR KL PANDYA AGP for Petitioner No(s).: 1 - 1.
MR MD RANA for Respondent No(s).: 1.
DELETED for Respondent No(s).: 2.
==========

CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 25/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 15.02.1996 passed by the Labour Court, Rajkot in Reference (LCR) No.1295 of 1988, whereby the petitioner was directed to reinstate the respondent to his original post with 10 % back wages.

2.0 The brief facts of the case are that the respondent entered into a contract with the petitioner for a period from June 1989 to August 1989. It is the case of the petitioner that on expiry of the said contract, the service of the respondent was brought to an end. Thereafter, the respondent raised a dispute, which, ultimately, culminated into a reference. The Labour Court, by impugned award, allowed the reference as aforesaid. Hence, this petition.

3.0 Mr. K.L. Pandya learned A.G.P has contended that though a copy of the said Agreement entered into with the respondent was produced before the Labour Court, the Labour Court has not considered the same, on the ground that the xerox copy of the Agreement was produced and not the original one.

3.1 Mr. Pandya has further submitted that the Labour Court has not recorded any finding that there was any breach of the provisions of the Industrial Disputes Act, 1947 and has not considered the document dated 08.07.1989. He has, therefore, submitted that the Labour Court has committed gross mistake in granting reinstatement with 10 % back wages to the respondent.

3.2 Mr. Pandya learned A.G.P for the petitioner has submitted that in view of the decision of the Apex Court in the case of Municipal Corporation, Faridabad v. Siri Niwas reported in (2004) 8 S.C.C. pg.195, the matter may be remanded to the Labour Court.

4.0 Mr. M D Rana learned advocate for the respondent has submitted that the Labour Court was completely justified in passing the impugned award. He has contended that the order dated 15.02.1996 was challenged only after recovery certificate was issued by the Labour Court on 07.02.1997, and therefore, no interference is required by this Court in this petition.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 06.05.1997 this Court had stayed the operation of the impugned award subject to the requirements of Section 17(B) of the Industrial Disputes Act, 1947. Having gone through the impugned award of the Labour Court, it transpires that the Labour Court has not dealt with the said issue of Contract entered into between the parties, and therefore, the matter is

required to be adjudicates by the Labour Court afresh. Moreover, in view of the principle laid down by the Apex Court in the above referred decision, the matter is required to be remanded for adjudication afresh.

6.0 In above view of the matter, the petitioner is directed to implement the award of the Labour Court since it is stated that it has not been implemented so far. However, it is clarified that the respondent shall be entitled for all benefits from the date of the publication of the award till he is reinstated in service. The said benefits to be paid within a period of three months from the receipt of writ of this order. The Labour Court shall proceed with the hearing of the matter afresh, only after the Receipt showing that all benefits as aforesaid have been paid to the respondent, within the period referred to herein above. The Labour Court shall dispose of the matter within a period of one year from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

pravin/ *